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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/809,483	03/15/2001	Kurt R. Linberg	P-8945	5644
27581	7590	01/26/2006		
MEDTRONIC, INC. 710 MEDTRONIC PARK MINNEAPOLIS, MN 55432-9924			EXAMINER NAJARIAN, LENA	
			ART UNIT	PAPER NUMBER
			3626	
DATE MAILED: 01/26/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/809,483

Applicant(s)

LINBERG ET AL.

Examiner

Lena Najarian

Art Unit

3626

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 28 December 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☒ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

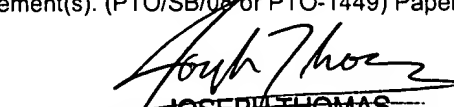
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: NONE.
Claim(s) objected to: NONE.
Claim(s) rejected: 22-28.
Claim(s) withdrawn from consideration: NONE.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
13. ☐ Other: _____.


JOSEPH THOMAS
SUPERVISORY PATENT EXAMINER

Continuation of 3. NOTE: Newly added claim 29 raises issues that would require further search and consideration.

Continuation of 11.

Applicant's arguments filed 12/28/05 have been fully considered but they are not persuasive. Applicant's arguments will be addressed hereinbelow in the order in which they appear in the response filed 12/28/05.

(1) Applicant argues that Elkind does not disclose a communications portal resident on a server and accessed over an information network to present information associated with an individual implantable medical device patient. Elkind does not provide any means for integrating accessible databases through selectable links. The GUI page shown in Fig. 7 and described in Elkind permits only a hypertext link to other web pages. There is no disclosure or suggestion of a selectable links to other databases so as to integrate them with the implantable medical device, patient medical records, and patient lab records databases.

The Examiner respectfully submits that Elkind discloses a communications portal resident on a server and accessed over an information network (paragraph [0041] of Elkind; the Examiner interprets "web site" to be a form of "portal" and "Internet" to be a form of "network"). In addition, the Examiner disagrees that Elkind merely permits a hypertext link to other web pages. The links provided by Elkind allow the user to gain access to databases, such as bulletin boards and forums (see Fig. 7 of Elkind).

(2) Applicant argues Linder et al. does not concern an implantable medical device and combining Linder with Elkind fails to provide the patient communications portal resident on a server accessed over an information network to present information that is specified in claim 22.

The Examiner respectfully disagrees that Linder et al. does not concern an implantable medical device. At lines 2-6 of Linder's abstract, it is disclosed that "a medical device, such as a portable or implantable medical device, collects patient and operational information...." Also note col. 9, lines 33-41 of Linder.

(3) Applicant argues that Linder is directed to a device monitoring and data collection system to permit a physician to analyze patient health parameters and the operation of a device (i.e., a wearable cardiac defibrillator [WCD] monitor). In contrast, Elkind is directed to a system permitting a patient to access medical records resident on an internet site from a local computer terminal. The alleged motivation to combine Elkind and Linder so as to "monitor and update performance of the device" is without basis. First, Elkind concerns access of a database by a patient from a local site. Linder on the other hand concerns a physician monitoring a patient from a remote location. There is no nexus between Elkind and Linder to promote attempting to combine the features of each.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the Examiner disagrees that Elkind is merely directed to a system permitting a patient to access medical records resident on an internet site. The Examiner respectfully submits that Elkind discloses a tracking mechanism and allows a physician to have immediate access to a patient's medical records (see paragraphs [0012], [0013], [0044], and [0008] of Elkind).

(4) At page 6 of Applicant's response, Applicant argues features which have not been entered (new claim 29).